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ACTION.

1. The right which section 284 of the Revised Statutes of Indiana gives to the personal representative of a deceased person, whose death has been caused by the wrongful act or omission of another, to maintain an action against the latter within two years after the death, accrues when the death so caused occurs, whether it happens before or after the expiration of a period of a year and a day from the date of its cause. *Louisville & St. Louis Railroad* v. *Clarke*, 230.
2. The common law rule in prosecutions for murder, appeals of death, and inquisitions against deodands, does not apply to the right of action given by that statute. *Ib.*

ADMIRALTY.

See SHIPS AND SHIPPING.

ALIEN.

See MINERAL LAND, 4, 5.

APPEAL.

See JURISDICTION, A, 12;
PARTIES, 1;
RES JUDICATA, 2.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

1. An assignment made in Indian Territory on the 29th day of July, 1889, by a debtor in failing circumstances, of a portion of his property to a trustee for the benefit of several persons who had become sureties on notes of the assignor not then due, being made in good faith and for a valuable consideration, was valid as against attaching creditors of the assignor, the common law being at that time in force in the Territory, and not the statutes of Arkansas which were subsequently extended and put in force in the Territory by the act of May 2, 1890, c. 182, 26 Stat. 81. *Huntley* v. *Kingman*, 527.
2. At common law a debtor in failing circumstances has a right to prefer creditors, though the fund for the payment of other creditors be lessened or absorbed thereby. *Ib.*
3. Whether a debtor in Illinois in failing circumstances has or has not the

right by transfers of property to prefer certain creditors in the disposition of his assets, it is clear that he has not the right to transfer to such creditors property largely in excess of their claims to the injury of other general creditors. *Hardt* v. *Heidweyer*, 547.

4. A bill in that State by other creditors of the debtor filed several years after such transfers were made, which attacks them and prays to have them decreed to be invalid and to have the assigned property distributed *pro rata* among the general creditors, and which alleges that the plaintiffs were ignorant of the matters complained of, but now have knowledge acquired within a month prior to the filing of the bill, but which does not show how knowledge of the wrongs complained of was obtained, nor why they had not had earlier the same means of ascertaining the facts, may be dismissed, on demurrer, for laches on the part of the complainants. *Ib.*

ATTACHMENT.

See CONDITION SUBSEQUENT.

BANK.

1. The borrowing of money, by a bank, though not illegal, is so much out of the course of ordinary and legitimate banking business as to require those making the loan to see to it that the officer or agent acting for the bank had special authority to borrow money. *Western National Bank* v. *Armstrong*, 346.
2. Whether a vice-president of a national bank who had, without authority from the board of directors, paid into the bank a large sum of money and received certificates of paid-up stock for a still larger amount could, on the subsequent insolvency of the bank without ratification of such increase, recover back his subscription money, or was to be treated as a general creditor, is a question which a court cannot settle in an action to which he is not a party. *Ib.*

CASES AFFIRMED OR FOLLOWED.

1. *Keokuk & Western Railroad Co.* v. *Missouri*, 152 U. S. 301, followed. *Keokuk & Western Railroad Co.* v. *Scotland County*, 317.
2. *United States* v. *Alger*, 151 U. S. 362, and *United States* v. *Stahl*, 151 U. S. 366, reaffirmed. *United States* v. *Alger*, 384.

See RAILROAD, 3.

CITIZEN.

See MINERAL LAND, 4, 5.

CLAIMS AGAINST THE UNITED STATES.

In an action brought to recover fees as assistant district attorneys in suits to vacate patents of public land, it being conceded that the complain-

ants did not expect, during the period in which the services were performed, that the United States would compensate them, and that they looked for recompense to the clients who had retained them, and that the use of the name of the United States had been consented to on the application of the plaintiffs with the understanding that they were to receive no compensation from the United States, and that on the first intimation that they might look to the United States for compensation, their formal employment was at once terminated, *held*, that there was no contract, express or implied, between them and the United States, for a breach of which judgment should be rendered against the latter. *Coleman* v. *United States*, 96.

See FEES.

CONDITION SUBSEQUENT.

A condition in a grant of land to a railway company that the company shall construct a certain length of road within a given time, and on its failure to do so, that the granted estate shall revert to the grantor, is a condition subsequent, for breach of which the grantor may enter upon the land and repossess himself of it; and, in case of his doing so, the land is not subject to attachment thereafter for debts of the company, contracted while the land was in its possession. *Schlesinger* v. *Kansas City & Southern Railway Co.*, 444.

CONSPIRACY.

See CRIMINAL LAW, 3, 4, 5, 6.

CONSTITUTIONAL LAW.

1. It is within the power of a State to preserve from extinction fisheries in waters within its jurisdiction, by prohibiting exhaustive methods of fishing, or the use of such destructive instruments as are likely to result in the extermination of the young as well as the mature fish. *Lawton* v. *Steele*, 133.
2. The provision in the statutes of New York, c. 591 of the Laws of 1880, as amended by c. 317 of the Laws of 1883, that nets set or maintained upon waters of the State, or on the shores of or islands in such waters, in violation of the statutes of the State enacted for the protection of fish, may be summarily destroyed by any person, and that it shall be the duty of certain officers to abate, remove, and forthwith destroy them, and that no action for damages shall lie or be maintained against any person for or on account of such seizure or destruction, is a lawful exercise of the police power of the State, and does not deprive the citizen of his property without due process of law, in violation of the provisions of the Constitution of the United States. *Ib.*
3. The provision in section 376 of the Code of Civil Procedure of Montana, which authorizes a court on the petition of a person interested in a

lead, lode or mining claim which is in the possession of another person, after notice to the adverse party, to order an inspection, examination or survey of the lode or mining claim in question, and that the petitioner shall have free access thereto for the purpose of making such inspection, examination and survey, and that any interference with him while acting under such order, shall be contempt of court, is not in conflict with the Constitution of the United States. *Montana Co.* v. *St. Louis Mining & Milling Co.*, 160.

4. The privileges and immunities of citizens of the United States, protected by the Fourteenth Amendment, are privileges and immunities arising out of the nature and essential character of the Federal government, and granted or secured by the Constitution. *Duncan* v. *Missouri*, 377.
5. Due process of law, and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government. *Ib.*
6. An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed; or an additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required; or, in short, in relation to the offence or its consequences, alters the situation of a party to his disadvantage. *Ib.*
7. The prescribing of different modes of procedure, and the abolition of courts and creation of new ones, leaving untouched all the substantial protections with which the existing law surrounds the person accused of crime are not considered within the constitutional prohibition. *Ib.*

See JURISDICTION, A, 6, 7, 8, 9.

CONTRACT.

1. S. agreed with a Deputy Quartermaster-General, who acted on behalf of the United States, to provide and furnish whenever called upon during the coming fiscal year, such vessels as might be required for a specified service in the harbor of New York. Each vessel was to have an engineer and fireman, the remainder of the crew to be supplied by the United States when required, and the fuel to be supplied by them. The payment, if employed by the day, was to be at the rate of $67 *per diem* for each vessel. The government was to have the management and control of the vessels while in its service. Under this contract S. furnished a vessel called the Bowen on the requisition of the quartermaster, which was accepted by the government, and went into its service. While in government employ a collision occurred, whereby the Bowen was so damaged that it had to be laid up for repairs for 61 days. During the most of this time S., at the government's request, furnished another vessel called the Stickney, which was accepted. He hired this vessel, paying $55 a day, and received from

the government the contract price of $67 for its use. When the Bowen resumed service after the completion of the repairs, S. claimed compensation for it for the 61 days at the rate paid by him for the Stickney. *Held*, that the contract was one for hiring, and not for service, and that the government, during its possession of the vessel, was a special owner, and bound to pay rent for it until returned to S. *United States* v. *Shea*, 178.

2. When services in the management of a farm and household in Utah are performed under a general retainer, without any express agreement as to the time or measure of compensation or the term of the employment, and such services continue for a series of years, no payments being made, and there is a mutual, open and current account between the manager and the proprietors, into which the matter of compensation enters as one of the items, the cause of action must be deemed to have accrued at the date of the last item proved in the account on either side. *Corinne Mills, Canal &c. Co.* v. *Toponce*, 405.

3. S. contracted with the State of Texas, in writing, January 18, 1882, to build a new capitol building for it for an agreed compensation, and not to assign the contract without the consent of the State. On the 31st of January, 1882, S., with the consent of the State, assigned an undivided three-fourths interest in the contract to F., G., and T., who were partners. On the same day, without the consent or knowledge of the State, S. assigned to B., C., and D., each, one-fourth of the one-fourth interest remaining in him. On the 9th of May, 1882, S. conveyed to F., G., and T. all the right and interest which he had in and under the contract, and the State gave its assent to this transfer on the 10th of May. It did not appear that the assignees in the last conveyance knew of the transfer to B., C., and D. On the 20th of June, 1882, F. and G. transferred, with the consent of the State, all their interest in the contract to T., who then performed the work to the satisfaction of the State, and received the agreed compensation therefor. On the 14th of April, 1883, D. transferred to E. the interest in the contract which had been transferred to him January 31, 1882, and on the 27th of May, 1884, he transferred the same interest to T. Most of these conveyances were filed and recorded in the office of the county clerk for Travis County, Texas, and some were filed in the office of the comptroller of public accounts of the State. In a suit brought by E. against T. to recover what he claimed to be his share of the profits under the contract, *Held*, (1) That it was not competent for S., by his own act, and without the consent of the State, to transfer any interest in the contract; (2) that all that could have been acquired by an assignment by S., without the consent of the State, was a right to maintain an action against S. for the share of the profits which he had attempted to transfer; (3) that when the contract was transferred to T., who was accepted by the State in lieu of the original contractor, T. entered upon its performance free from

any disposition of the profits made by the original contract; (4) that the filing of an instrument for record in a public office of the State, for the record of which the statutes of the State made no provision, carried with it no notice to other parties. *Burck* v. *Taylor*, 634.

See MUNICIPAL CORPORATION.

CORPORATION.

See JURISDICTION, A, 3;
PATENT FOR INVENTION, 11;
RAILROAD, 1, 2.

COSTS.

See JURISDICTION, A, 12.

COUNTER-CLAIM.

See EQUITY, 4.

COURT AND JURY.

1. When, in an action founded upon a state statute, a Federal judge in instructing the jury adopts the construction given to the statute by the highest court of the State, it is no error to add that he had formerly been of a different opinion, and so instructed former juries. *Louisville & St. Louis Railroad Co.* v. *Clarke*, 230.
2. The jury having in this case practically affirmed the truth of the plaintiff's story, this court accepts the result. *Corinne Mill, Canal & Stock Co.* v. *Toponce*, 405.

See NEGLIGENCE, 2.

CRIMINAL LAW.

1. A *nolle prosequi* as to a count in an indictment works no acquittal, but leaves the prosecution as though no such count had been inserted in the indictment. *Dealy* v. *United States*, 539.
2. A verdict of guilty or not guilty as to the charge in one count of an indictment is not responsive to the charge in any other count. *Ib.*
3. In charging a conspiracy to defraud the United States of large tracts of land by means of false and fictitious entries under the homestead laws, it is not necessary to specify the tracts by number of section, township, and range. *Ib.*
4. An entry of lands under the homestead law in popular understanding means not only the preliminary application, but the proceedings as a whole to complete the transfer of title, and in charging a conspiracy to obtain public land by false entries, the word may be used in that sense in the indictment. *Ib.*
5. A charge that an overt act was done according to and in pursuance of a conspiracy which had been previously recited, is equivalent to charging that it was done to effect the object of the conspiracy. *Ib.*

6. If an illegal conspiracy be entered into within the limits of the United States and within the jurisdiction of the court, the crime is complete, and the subsequent overt act in pursuance thereof may be done anywhere. *Ib.*

See JURISDICTION, C;
SPIRITUOUS LIQUORS.

CUSTOMS DUTIES.

1. In construing a tariff act, when it is claimed that the commercial use of a word or phrase in it differs from the ordinary signification of such word or phrase, in order that the former prevail over the latter it must appear that the commercial designation is the result of established usage in commerce and trade, and that at the date of the passage of the act that usage was definite, uniform, and general, and not partial, local, or personal. *Maddock* v. *Magone*, 368.
2. Under the act of March 3, 1883, c. 121, 22 Stat. 488, brass upholstering nails were subject to the duty of 45 per cent ad valorem imposed upon manufactures, articles, or wares, not specially enumerated or provided for in the act, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other metal. *Berbecker* v. *Robertson*, 373.
3. An importation of goods into the port of New York in 1881 being classified under the first clause of Rev. Stat. § 2499 by the customs officers, as bearing a similitude to manufactures composed wholly or in part of the hair of the alpaca, goat, or other like animals, the importer paid the duties demanded under that classification, — 50 cents per pound and 35 per cent ad valorem, — first protesting that the goods were "composed of hair and cotton only, and as such should pay a duty of 35 per cent ad valorem, as a non-enumerated article under the second half of Rev. Stat. § 2499, being the highest rate of duty which any of the component material pays." In an action brought by the importer to recover the alleged excess of duties so demanded and collected, *Held*, that this protest was defective in that it failed to point out or suggest, in any way, the provision which actually controlled, and in effect only raised the question which of two clauses, under one or the other of which it was assumed that the importation came, should govern as being most applicable. *Herrman* v. *Robertson*, 521.
4. Dry salted codfish, never pickled, imported January 19, 1888, in dry flour or sugar barrels, incapable of containing liquids, were subject to a duty of 25 per cent ad valorem, under the act of March 3, 1883, c. 121, 22 Stat. 488, 504, as other fish not specially enumerated or provided for; but, as the importer's protest was not sufficient to notify the collector of his claim, the judgment below is reversed, and a judgment ordered for defendant. *Presson* v. *Russell*, 577.
5. Chinese goat-skins, tanned with the hair on, so that the skin is soft and

pliant, are not dutiable as rugs under Schedule K of the act of March 3, 1883, c. 121, 22 Stat. 488, 508. *Seeberger* v. *Schleringer*, 581.

6. The commercial designation of an article is not a matter of which courts can take judicial notice, but is a fact, to be proved by evidence, like any other fact. *Ib.*
7. In case of special findings of fact by the court, no exception is necessary in order to raise the question whether the facts found support the judgment. *Ib.*
8. Shell-covered opera glasses, composed of shell, metal, and glass, were dutiable under the act of March 3, 1883, c. 121, 22 Stat. 488, as manufactures composed in part of metal, under Schedule C. *Ib.*
9. Anchovy paste and bloater paste, made of anchovies or bloaters ground up fine and spiced, used as food or as an appetizer, in sandwiches or with a cracker, and not used as a condiment, nor known in trade or commerce as sauces, may be found by a jury to come within the description of "fish prepared or preserved," and not within the description of "sauces of all kinds," in the tariff act of 1883. *Bogle* v. *Magone*, 623.
10. By sections 2931 and 3011 of the Revised Statutes, as amended by the act of February 27, 1877, c. 69, if at the first port of entry, not being one of the ports at which the statutes authorize goods to be imported and shipped through without appraisement, goods imported by sea are entered for warehousing and immediate transportation by the same vessel to another port and are transported accordingly, and the duties thereon are assessed by the collector at the first port, and again by the collector at the second port and paid by the importers to the second collector to obtain possession of the goods, no part of the duties can be recovered back in an action by them against him, unless due protest is made within ten days after the decision of the first collector as to the rate and amount of duties. *Saltonstall* v. *Russell*, 628.
11. An action cannot be maintained against a collector of customs, either at common law or under the statutes of the United States, to recover duties alleged to have been illegally exacted, in 1892, upon an importation of merchandise, appraised according to law, no reappraisement being asked for, and the duties being assessed upon the valuation so arrived at. *Schoenfeld* v. *Hendricks*, 691.
12. A Circuit Court of the United States is without jurisdiction to hear and determine a suit against a collector raising such issues. *Ib.*

DAMAGES.

See PATENT FOR INVENTION, 10, 11.

DEED.

See CONDITION SUBSEQUENT;
RAILROAD, 4.

DEPARTMENTAL REGULATIONS.

See EVIDENCE, 1;
PUBLIC LAND, 5.

DISTRICT ATTORNEY.

See FEES.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 5.

EJECTMENT.

1. In an action of ejectment, in a Federal court, the legal title prevails. *Miller* v. *Courtnay*, 172.
2. The legal title to the premises in dispute passed to the grantor of the defendant by sale under execution and the sheriff's deed, and was not divested by the subsequent decree set forth in the statement of facts. *Ib.*

EQUITY.

1. The court being unable, in any view that it can take of the evidence, to reconcile the conflicting testimony of the witnesses respectively examined in behalf of the parties, holds that the evidence fails to show that the complainant is entitled to the relief prayed for. *Gumaer* v. *Colorado Oil Co.*, 88.
2. A garnishee, who occupies the double position of debtor to the principal defendant in a definite or ascertained amount, and also that of a creditor of such principal debtor by way of unliquidated damages arising out of the breach of a contract in existence when the garnishment proceedings were instituted, can, after an order at law subjecting the defined indebtedness to the payment of the garnishor, invoke the aid of a court of equity to restrain the garnisheeing creditor from enforcing the payment of the amount due until the unliquidated damages can be ascertained, and set off against such indebtedness, on the ground that the principal debtor is insolvent and a non-resident of the State in which the garnishee resides, and in which the garnishment proceedings are had. *North Chicago Rolling Mill Co.* v. *St. Louis Ore & Steel Co.*, 596.
3. Equity will entertain jurisdiction and afford relief against the collection of a judgment where there is a meritorious, equitable defence thereto, which could not have been set up at law, or which the party was, without fault or negligence, prevented from interposing. *Ib.*
4. The adjustment of demands by counter-claim or set-off rather than by independent suit is favored and encouraged by the law, to avoid circuity of action and injustice. *Ib.*
5. The insolvency of the party against whom a set-off is claimed is a sufficient ground for equitable interference; and in Illinois and some other States the non-residence of the party against whom the set-off is asserted, is also held to be sufficient ground therefor. *Ib.*
6. It is settled in England, where the law differs in no material respect from that of Illinois, that a garnishee order does not effect a transfer

of the debt to the garnishor, or create the relation of creditor and debtor between him and the garnishee. *Ib.*

7. It is a recognized principle that the rights of the garnishor do not rise above or extend beyond those of his debtor; that the garnishee shall not, by operation of the proceedings against him, be placed in any worse condition than he would have been in had the principal debtor's claim been enforced against him directly; that the liability, legal and equitable, of the garnishee to the principal debtor is a measure of his liability to the attaching creditor, who takes his place. *Ib.*

See ASSIGNMENT FOR BENEFIT OF CREDITORS, 2.

ESTOPPEL.

1. A railroad company which derives its title to its road from a foreclosure of a mortgage, given before the commencement of a suit by stockholders to enjoin the collection of taxes upon the property so sold and conveyed, does not occupy a relation to the plaintiffs in that suit, which entitles it to file a bill of revivor, or to invoke the decree in the suit as an estoppel. *Keokuk & Western Railroad Co.* v. *Scotland County*, 318.
2. The purchaser under a mortgage is not entitled to the benefit of an estoppel under a decree obtained in a suit begun after the execution of the mortgage. *Ib.*

See RES JUDICATA.

EVIDENCE.

1. Wherever, by the express language of any act of Congress, power is entrusted to either of the principal departments of government to prescribe rules and regulations for the transaction of business in which the public is interested, and in respect to which they have a right to participate, and by which they are to be controlled, the rules and regulations prescribed in pursuance of such authority become a mass of that body of public records of which the courts take judicial notice. *Caha* v. *United States*, 211.
2. In an action by the personal representative of a deceased person whose death has been caused by the wrongful act or omission of the defendant, evidence as to the income of the deceased previous to his death is admissible. *Louisville & St. Louis Railroad Co.* v. *Clarke*, 230.

See CONTRACT, 3 (4); PUBLIC LAND, 5.

EX POST FACTO LAW.

See CONSTITUTIONAL LAW, 6.

FEES.

An action cannot be maintained against the United States by a District Attorney to recover for services rendered and expenses incurred in prosecuting for fines, penalties, and forfeitures, under Rev. Stat.

§§ 838 and 3085, for violations of the Customs laws or the Internal Revenue laws, unless the Secretary of the Treasury first determines what sum he deems just and reasonable therefor. *United States* v. *Bashaw*, 436.

FISHERIES.

See CONSTITUTIONAL LAW, 1, 2.

FRAUD.

See RAILROAD, 5.

GARNISHEE PROCESS.

See EQUITY, 2, 6, 7.

GUARDIAN AND WARD.

A guardian of a minor, to whom a policy of life insurance on the tontine dividend plan is payable, is authorized, after the completion of the tontine dividend period, and upon receiving its actual surrender value, to discharge the policy, without any order of court; notwithstanding the provisions of the statutes of Mississippi, authorizing him to obtain an order of court for the sale of personal property, or for the sale or compromise of claims. *Maclay* v. *Equitable Life Assurance Society*, 499.

HEIR.

In States whose laws permit illegitimate children, recognized by the father in his lifetime, to inherit from him, such children are "heirs" within the meaning of Rev. Stat. § 2269, which provides that when a party entitled to claim the benefit of the preëmption laws of the United States dies before consummating his claim, his executor or administrator may do so, and the entry in such case shall be made in favor of his heirs, and the patent, when issued, inure to them as if their names had been specially mentioned. *Hutchinson Investment Co.* v. *Caldwell*, 65.

INDICTMENT.

See CRIMINAL LAW, 3.

INHERITANCE.

See HEIR.

INSOLVENCY.

See BANK, 2;
EQUITY, 5.

INSOLVENT DEBTOR.

See ASSIGNMENT FOR BENEFIT OF CREDITORS.

INSURANCE.

See GUARDIAN AND WARD.

JUDICIAL NOTICE.

See EVIDENCE, 1;
PUBLIC LAND, 5.

JUDGMENT.

See RES JUDICATA.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

1. This court has jurisdiction to review by writ of error a judgment of the highest court of the State of Oregon, deciding that a donation land claim under the act of Congress of September 27, 1850, c. 76, of land bounded by tide water, passed no title or right below high water mark, as against a subsequent grant from the State. *Shively* v. *Bowlby*, 1.
2. In a suit in a Circuit Court by a water company, to which a municipal government has granted the exclusive right to supply it and its inhabitants with water for fifteen years, against the municipality to prevent it from establishing or maintaining other water works within the limits of the municipality until after the expiration of said period, it did not appear affirmatively that it was contemplated that the other works complained of were to go into operation until after the expiration of that period; and as it did not appear from the record that there was over $5000 in controversy, *held*, that this court had no jurisdiction. *El Paso Water Co.* v. *El Paso*, 157.
3. The decision by the highest court of a State, that the conveyance by a corporation existing under the laws of the State (and acting in this respect under a statute of the State) to an individual, his heirs, executors, administrators, and assigns, of "all the property of said company, consisting of the charter and its amendments and franchises," and other enumerated property, and "all the property, goods, and chattels of said company of whatsoever nature or description," passed to him only a life estate in the franchises of the corporation, and that these did not pass to his heirs, presents no question of a Federal nature, but only one as to the extent of an authority given by statute to a corporation to dispose of its franchises. *Snell* v. *Chicago*, 191.
4. If, at the hearing of a bill in equity to redeem land worth more than $5000 from incumbrances, the only controversy is as to less than that amount of incumbrances, no appeal lies to this court. *Carne* v. *Russ*, 250.
5. When the Supreme Court of a State fails to give proper effect to a

decree of a Circuit Court of the United States, this court has jurisdiction over its judgment to correct the error. *Dowell* v. *Applegate*, 327.

6. This court has no jurisdiction to revise the decision of the highest court of a State, in an action at law, upon a pure question of fact, although a Federal question might arise if the question of fact were decided in a particular way. *Israel* v. *Arthur*, 355.
7. The decision by the highest court of a State that a woman divorced from her husband in a proceeding instituted by him and by a decree which does not bind her, who marries another husband, and lives with him as his wife, is thereby estopped, after the death of the first husband, from setting up a claim to a widow's share in the distribution of his estate, presents no Federal question for revision by this court. *Ib.*
8. The decision of the highest court of a State, in a suit brought by the State to establish its title to lands within the State, claimed and occupied by a railroad company, that the State was estopped by its acts, conduct, silence, and acquiescence from setting up such claim, presents no Federal question for revision by this court. *Michigan* v. *Flint & Pere Marquette Railroad Co.*, 363.
9. To give this court jurisdiction over a judgment of the highest court of a State, the title, right, privilege, or immunity relied on must be specially set up or claimed at the proper time and in the proper way, and the decision must be against it; whereas, in this case, the question was not suggested until after judgment, and after an application for rehearing had been overruled, and only then in the form of a motion to transfer the cause. *Duncan* v. *Missouri*, 377.
10. Compliance with a mandate of this court, which leaves nothing to the judgment or discretion of the court below, may be enforced by mandamus. *City Bank of Fort Worth* v. *Hunter*, 512.
11. This court cannot entertain an appeal from a judgment executing its mandate, if the value of the matter in dispute upon the appeal is less than $5000. *Ib.*
12. No appeal lies from a decree for costs. *Ib.*
13. The verdict and judgment in the court below having been for $5000, and that judgment having been a few days later amended on the motion — apparently *ex parte* — of the defendant, by adding to it the sum of $116.73, interest, this court, as the defendant made the motion with the sole object of obtaining a writ of error not otherwise allowable, declines to permit what was done to be efficacious in the accomplishment of the purpose designed, and dismisses the writ of error. *Northern Pacific Railroad Co.* v. *Booth*, 671.
14. When a defendant, after the close of the plaintiff's evidence, moves to dismiss, and, the motion being denied, excepts thereto, and then proceeds with his case, and puts in evidence on his part, he thereby waives the exception, and the overruling of the motion to dismiss cannot be assigned for error. *Union Pacific Railway Co.* v. *Daniels*, 684.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. A Circuit Court of the United States has no jurisdiction over a suit to enforce a contract for the conveyance of land brought in the State where the land is situated by the assignee of one party to the contract against the other party, if both parties to the contract are citizens of the same State, although the assignee is a citizen of a different State. *Plant Investment Co.* v. *Jacksonville, Tampa & Key West Railway*, 71.
2. Under the act of August 13, 1888, c. 866, the Circuit Court of the United States has no jurisdiction, either original, or by removal from a state court, of a suit as one arising under the Constitution, laws or treaties of the United States, unless that appears by the plaintiff's statement of his own claim. *Tennessee* v. *Union & Planters' Bank*, 454.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

The District Court of the United States in the District of Kansas had jurisdiction over a prosecution for the crime of perjury, in violation of the provisions of Rev. Stat. § 5392, committed in what is now the Territory of Oklahoma before the passage of the act creating that Territory, although the indictment was not found until after the passage of that act. *Caha* v. *United States*, 211.

LACHES.

1. The facts admitted or proved in this case show that the plaintiff was guilty of laches in failing to file his bills for so long a time, and it is held that they were properly dismissed by the court below. *Halstead* v. *Grinnan*, 412.
2. Laches is an equitable defence, controlled by equitable considerations, and the lapse of time must be so great, and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to assert them, where he has had for a considerable period knowledge of their existence, or might have acquainted himself with them, by the use of reasonable diligence. *Ib.*
3. The length of time during which a party neglects the assertion of his rights which must pass in order to show laches, varies with the peculiar circumstances of each case, and is not subject to an arbitrary rule. *Ib.*

See ASSIGNMENT FOR BENEFIT OF CREDITORS, 4.

LAGER BEER.

See SPIRITUOUS LIQUOR.

LEASE.

See LOCAL LAW, 1.

LIMITED LIABILITY.

See SHIPS AND SHIPPING.

LOCAL LAW.

1. An owner of grazing land in Texas, who stocks his land with cattle greatly in excess of the number which can be fed upon it, and permits them to go on and occupy and feed from the grass growing upon unoccupied land of a neighboring proprietor, with no separating fence, becomes liable to the latter for the rental value of his land so occupied. *Lazarus* v. *Phelps*, 81.
2. Evidence of the payment of the purchase money due to the State of Pennsylvania on a land warrant, clothes the person paying it with the ownership of the warrant, and with the right to maintain ejectment for the land. *Murphy* v. *Packer*, 398.
3. A recital in a patent from Pennsylvania to B of a conveyance by A to B before the warrant issued, is no evidence against persons claiming under C to whom a previous patent had issued for the same land upon the warrant to A. *Ib.*
4. When county commissioners in Pennsylvania buy in for the county land sold for nonpayment of taxes, and the land, while owned by the county, is illegally assessed for taxes, and sold for nonpayment of them, and conveyance is duly made to the purchaser, who remains in possession forty years, the county is estopped from asserting title in itself. *Ib.*
5. When a valid title to real estate in Pennsylvania becomes vested in a person by reason of the ownership of a land warrant and his payment of the purchase money to the State, a stranger to his title, claiming under another and distinct title, cannot avail himself of the act of April 22, 1856, Purdon's Digest, 1064, 11th ed., with regard to implied or resulting trusts. *Ib.*

Arkansas. *See* RAILROAD, 3.
Illinois. *See* ASSIGNMENT FOR BENEFIT OF CREDITORS, 3, 4; EQUITY, 4.
Montana. *See* CONSTITUTIONAL LAW, 3.
Mississippi. *See* GUARDIAN AND WARD.
Texas. *See* LOCAL LAW, 1.
Utah. *See* CONTRACT, 2.

LONGEVITY PAY.

1. Under the act of March 3, 1883, c. 97, 22 Stat. 473, an officer in the navy, who resigns one office the day before his appointment to a higher one, though in a different branch of the service, is only entitled to longevity pay as of the lowest grade, having graduated pay, held by him since he originally entered the service. *United States* v. *Alger*, 384.
2. *United States* v. *Alger*, 151 U. S. 362, and *United States* v. *Stahl*, 151 U. S. 366, reaffirmed. *Ib.*

MANDATE.

See JURISDICTION, A, 10, 11.

MASTER AND SERVANT.

1. When the employé of a railroad company sues the company to recover damages for injuries inflicted upon him while in its service by reason of defective machinery, and it plainly appears that he was guilty of contributory negligence, and there is no evidence of a wilful or intentional negligence on the part of the railroad company for the purpose of injuring the plaintiff, there is nothing in the case to submit to the jury. *St. Louis & San Francisco Railway* v. *Schumacker*, 77.
2. A switchman in the employ of a railroad company was directed, in the line of his regular duty, to connect together two cars, one of which was loaded with bridge timbers. The timbers were unusually and dangerously loaded, extending so far over the end of the car as to make the coupling dangerous. The switchman had no notice or knowledge of this fact, and in making the coupling was very severely injured. To an action brought to recover damages for the injury, the railroad company pleaded that the injuries were the result of the switchman's negligence, and not of the negligence of the company, and on the trial asked to have the jury instructed to return a verdict for defendant. The court declined, and instructed the jury on this point, in effect, that they were to find whether the car was or was not properly loaded, and whether the plaintiff, by the exercise of proper diligence, could or could not have discovered the projecting timber before the cars came together and in time to avoid the danger, and that if he could not, by the exercise of such diligence, have so discovered it, then he was entitled to recover. The jury returned a verdict for the plaintiff. *Held*, that, as there was no conclusive evidence of a want of due care on the part of the switchman in not observing the projecting timber while in discharge of his duty, and while his attention was directed to his work, there was no error or unfairness in these instructions. *Northern Pacific Railroad* v. *Everett*, 107.
3. A railroad company is bound to see to it, at the proper inspecting station, that the wheels of the cars in a freight train about to be drawn out upon the road are in a safe and proper condition; and if the servants to whom it delegates this duty perform it so negligently as to permit a car to go into service on the train, one of the wheels of which has an old crack in it some twelve inches long, filled with grease, rust and dirt, but which could have been detected without difficulty, and in consequence of that wheel's giving way while the train is in motion an accident takes place by which another servant of the company is injured, the company is liable therefor. *Union Pacific Railway Co.* v. *Daniels*, 684.

MINERAL LAND.

1. The side lines of the location of a lode claim, under Rev. Stat. § 2322, are those which run on each side of the vein or lode, distant not more

than 300 feet from the middle of such vein. *King* v. *Amy & Silversmith Mining Co.*, 222.

2. A line in such a location which does not run parallel with the course of the vein, but crosses it, is an end line. *Ib.*
3. When, in making such a location, the claimant calls the longer lines, which cross the vein, side lines, and the shorter lines, which do not cross it, end lines, this court will disregard, in its decision, the mistake of the locator in the designation of the side and end lines, and will hold the locator to the lines properly designated by him, as it cannot relocate them for him. *Ib.*
4. A deed of a mining claim by a qualified locator to an alien operates as a transfer of the claim to the grantee, subject to question in regard to his citizenship by the government only. *Manuel* v. *Wulff*, 505.
5. If, in a contest concerning a mining claim, under Rev. Stat. § 2326, one party, who is an alien at the outset, becomes a citizen during the proceedings and before judgment, his disability under Rev. Stat. § 2319 to take title is thereby removed. *Ib.*

See CONSTITUTIONAL LAW, 3.

MORTGAGE.

See PARTIES, 2, 3.

MOTION TO DISMISS.

See JURISDICTION, A, 14.

MUNICIPAL CORPORATION.

The Mayor and City Council of Boston had authority, in 1885, to authorize the City Water Board, without previous advertisement, to contract for the exchange of such pumping engines and machinery as were inadequate or of insufficient capacity for those of the capacity required by plans and estimates for a high-service extension previously made, and to direct that the expense of such exchange should be charged to the appropriation for high-service extension; and the contract made by the Water Board, in pursuance of such authority, and without previous advertising, is binding on the city. *Worthington* v. *Boston*, 695.

NEGLIGENCE.

1. After serving as a brakeman in the employ of a railroad company, S. became a conductor on the same railroad, and as such had been engaged at a depot yard at one of its stations at least once a week, and usually oftener, for seven years. While making up his train at that yard, preparatory to running out with it, after the chief brakeman had failed in an attempt to make a coupling he tried to make it. There was an unblocked frog at the switch where the car was. He put his foot into this frog, and was told by the brakeman that he would be caught if he left it there. He took it out, but put it in again, and, being unable

to extricate it when the cars came together, he was thrown down and killed. In an action brought by his administratrix against the railroad company to recover damages, *Held*, that S. must be assumed to have entered and continued in the employ of the railroad company with full knowledge of any danger which might arise from the use of unblocked frogs; that he was guilty of contributory negligence; and that the company was entitled to a peremptory instruction in its favor. *Southern Pacific Company* v. *Seley*, 145.

2. A railway company which operated a coal mine near one of its stations in Colorado, was in the habit of depositing the slack on an open lot between the mine and the station in such quantities that the slack took fire and was in a permanent state of combustion. This fact had been well known for a long time to the employés and servants of the company, but no fence was erected about the open lot, and no efforts were made to warn people of the danger. A lad 12 years of age and his mother arrived by train at the station and descended there. Neither had any knowledge of the condition of the slack, which, on its surface, presented no sign of danger. Something having alarmed the boy, he ran towards the slack, fell on and into it, and was badly burned. Suit was brought to recover damages from the railway company for the injuries thus inflicted upon him. *Held*, (1) That the company was guilty of negligence, in view of the statutory obligation to fence; (2) that the lad was not a trespasser, under the circumstances, and had not been guilty of contributory negligence; (3) that the case was within the rule that the court may withdraw a case from the jury altogether and direct a verdict, when the evidence is undisputed, or is of such conclusive character that the court would be compelled to set aside a verdict returned in opposition to it. *Union Pacific Railway Co.* v. *McDonald*, 262.

See MASTER AND SERVANT.

NOLLE PROSEQUI.

See CRIMINAL LAW, 1.

PARTIES.

1. On an appeal from a decision of a Circuit Court, all parties to the record who appear to have an interest in the decision challenged, must be given an opportunity to be heard. *Davis* v. *Mercantile Trust Co.*, 590.
2. The successful bidder at a foreclosure sale becomes thereby a party to the proceedings, and is entitled to be heard on questions subsequently arising affecting his bid, not foreclosed by the terms of the decree of sale. *Ib.*
3. In a decree for the foreclosure of a mortgage, the two parties principally interested are the mortgagor and mortgagee, and third parties should not be given an opportunity to disturb the decree without first giving the principal parties an opportunity to be heard. *Ib.*

PATENT FOR INVENTION.

1. Letters patent No. 204,216, granted May 28, 1878, to Richard T. Hambrook, for an improvement in refrigerators, are, in view of the prior state of the art, void for want of patentable novelty. *Belden Manufacturing Co.* v. *Challenge Corn Planter Co.*, 100.

2. The owner of an exclusive right to sell, place and operate a patented invention within the limits of a State, conveyed to another party the like exclusive right in certain specified counties in that State, and agreed that during the period covered by the licenses and patents, the grantor would not knowingly sell or permit others to sell the patented goods within those counties, and further, that the grantor would supply the patented articles to the grantee on specified terms and conditions. The contract also guaranteed that the patented articles so supplied should have a life service of five years, and the grantor agreed to defray the expense of incidental repairs necessary thereto. The grantor then assigned all its rights and interest in this contract to a third party. The grantee continued to order the patented articles, as wanted, from the grantor, and the assignee supplied the goods as ordered and they were accepted. The assignee sued the grantee to recover the value of the goods so delivered. The grantee denied all liability and set up as counter claim, a claim for damage by reason of sales of the patented article in the territory covered by the license. *Held*, (1) That the defendant, having accepted the goods from the plaintiff, was bound to pay for them; (2) that his liability for them was to be measured by the contract price, and not by the market rate; (3) that with reference to the sale of the patented articles in the licensed territory, the *scienter* was an essential part of the agreement, and, in the absence of proof of actual knowledge of the sale, by the plaintiff, the defendant could not recover on his counter claim; (4) that as to sales which were shown to have been made with the plaintiff's knowledge, the measure of damages was the plaintiff's profits, and not the profits which the defendant might have made; (5) that the defendant could recover, under the agreement as to the life service of the patented articles supplied to him, only for such repairs as he had been obliged to make, and not for estimated repairs during the remainder of the period. *Cincinnati Siemens-Lungren Co.* v. *Western Siemens-Lungren Co.*, 200.

3. A patentee of an invention, or of a design, cannot, in a suit against infringers thereof, recover damages within section 4900 of the Revised Statutes, or the penalty imposed by the act of February 4, 1887, c. 105, without alleging and proving either that patented articles made and sold by him, or the packages containing them, were marked "patented," or else that he gave notice to the defendants of his patent and of their infringement. *Dunlap* v. *Schofield*, 244.

4. An inventor who acquiesces in the rejection by the Patent Office of his claim in one form, and accepts a patent with the claim changed so as

to correspond with the views of that office, is estopped to claim the benefit of the rejected claim. *Morgan Envelope Co.* v. *Albany Perforated Wrapping Paper Co.*, 425.

5. Letters patent No. 325,410, granted to Oliver H. Hicks September 1, 1885, for a package of toilet paper known as the oval roll or oval king package, is void for want of patentable invention. *Ib.*
6. Letters patent No. 325,174, issued to Oliver H. Hicks August 25, 1885, for a toilet paper fixture, and letters patent No. 357,993, issued to Oliver H. Hicks February 15, 1887, for an apparatus for holding toilet paper, are not infringed by selling such fixture, or apparatus, bought of the patentee, with paper manufactured by the seller. *Ib.*
7. When a patentee has once received his royalty, he cannot treat the subsequent seller or user as an infringer. *Ib.*
8. The alleged invention, protected by letters patent No. 161,757, dated April 6, 1875, issued to James C. Covert for "improvement in clasps or thimbles for hitching devices," did not involve such an exercise of the inventive faculty as entitled it to protection. *Sargent* v. *Covert*, 516.
9. The invention patented to Charles G. Am Ende by letters patent No. 181,024, dated August 15, 1876, which "had for its object to combine the various advantages of cotton-fibre with those possessed by boracic acid and glycerine for preserving animal and vegetable matter from decay," was useful, novel, and patentable, and was described in the application and specification in sufficiently full, clear, and exact terms to enable an intelligent chemist reading that description of it to construct and use it. *Seabury* v. *Am Ende*, 561.
10. In estimating the profits derived from the unlawful manufacture and sale of a patented invention, the infringer should not be allowed interest on the capital invested in his plant, unless it appears that the plant was used solely for the manufacture or sale of the patented article, or the evidence be such as to enable the master to satisfactorily apportion the interest between the several kinds of business. *Ib.*
11. If the infringer be a corporation, salaries of its officers should not be allowed in estimating such profits, where it does not appear that they have been actually paid. *Ib.*

PERJURY.

See JURISDICTION, C;
PUBLIC LAND, 4.

PRACTICE.

1. There being no assignment of error, as required by Rev. Stat. § 997, and no specification of errors, as required by Rule 21, this case is dismissed. *Rowe* v. *Phelps*, 87.
2. By the submission of a case to the judgment of a Circuit Court upon an agreed statement of facts, all questions of pleading are waived;

and no finding of facts by the court is necessary. *Saltonstall* v. *Russell*, 628.

See JURISDICTION, A, 14.

PRINCIPAL AND AGENT.

The evidence does not bring this case within the operation of the following principles of law, laid down by the court in its opinion, namely: (1) That an agent is precluded from taking advantage of his principal, or from dealing with the property committed to his care in any other capacity than as an agent, who is bound to subordinate his own interests to those of his principal; (2) that an agent cannot directly or indirectly become the purchaser of property of his principal, entrusted to him to sell, and cannot maintain a title thus acquired as against his principal; for, in so purchasing, his duty and his interest would come in conflict; (3) that if an agent to sell effects a sale to himself, under the cover of the name of another person, he becomes, in respect to the property, a trustee for the principal, and, at the election of the latter, seasonably made, will be compelled to surrender it, or, if he has disposed of it to a *bonâ fide* purchaser, to account not only for its real value, but for any profit realized by him on such resale; and this will be done upon the demand of the principal, although it may not appear that the property, at the time the agent fraudulently acquired it, was worth more than he paid for it; (4) that the law will not, in such case, impose upon the principal the burden of proving that he was, in fact, injured, and will only inquire whether the agent has been unfaithful in the discharge of his duty; for, while the agency continues he must act, in the matter of such agency, solely with reference to the interests of his principal; and the law will not permit him, without the knowledge or assent of his principal, to occupy a position in which he will be tempted not to do the best he may for the principal. *Robertson* v. *Chapman*, 673.

PUBLIC LAND.

1. The original claim of the State of Kansas to the school-lands in townships 16 and 36 in that State, was rejected by Congress and abandoned by the State, and the right of Congress was conceded to the absolute control of the lands thus embraced and of lands set apart for the use of Indians until such right should be extinguished by appropriate legislation. *Missouri, Kansas & Texas Railway* v. *Roberts*, 114.
2. By the act of July 26, 1866, c. 270, 14 Stat. 289, granting a right of way to the company subsequently known as the Missouri, Kansas and Texas Railway Company across the public lands in the State of Kansas, the title of the lands composing that right of way, including townships 16 and 36, when crossed by it, became vested in that company. *Ib.*
3. Within the scope of Rev. Stat. § 5392, local land officers, in hearing

and deciding upon a contest in respect of a homestead entry, constitute a competent tribunal, and the contest so pending before them is a case in which the laws of the United States authorize an oath to be administered. *Caha* v. *United States*, 211.

4. False swearing in a land contest before a local land office, in respect of a homestead entry, is perjury within the scope of Rev. Stat. § 5392. *Ib.*
5. The courts of the United States take judicial notice of rules and regulations prescribed by the Department of the Interior, in respect of contests before the Land Office. *Ib.*
6. Congress contemplated by the act of July 2, 1864, 13 Stat. 365, "granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound, on the Pacific coast, by the northern route," the construction of a main trunk line, which would not touch at any point at or near Portland, and the western end of which would be east and northeast of a direct line between Portland and Puget's Sound; and also of a branch line leaving the main trunk line at some suitable place, not more than three hundred miles from its western terminus, and extending, *via* the valley of the Columbia River, to a point at or near Portland. *United States* v. *Northern Pacific Railroad Co.*, 284.
7. As to Portland, the purpose of Congress by the passage of that act was, to connect it with the east by a branch road through the valley of the Columbia that would strike a main trunk line connecting Puget's Sound with Lake Superior, and not to connect Portland with Puget's Sound by the most eligible route between those places. *Ib.*
8. The grant to the Oregon Central Railroad Company by the act of May 4, 1870, c. 69, 13 Stat. 94, had taken effect before the grant to the Northern Pacific Railroad Company by the joint resolution of May 31, 1870, 16 Stat. 378, was made, and consequently the lands in question in this case were not included in that grant to the Northern Pacific Railroad Company. *Ib.*
9. When the lands so granted to the Oregon Central Railroad Company were forfeited to the United States, they were thereby restored to the public domain, and did not pass to the Northern Pacific Company by the said grant of May 31, 1870. *Ib.*

See HEIR.

RAILROAD.

1. A railroad corporation, chartered in Missouri in 1857, with a provision that its property should be exempt from taxation for a period of twenty years after its completion, which took place in 1872, was consolidated with an Iowa corporation in 1870, under a general law of Missouri, and in 1886 the consolidated road was sold under a decree of foreclosure of a mortgage to purchasers who conveyed it to an Iowa corporation. *Held*, that the new organization held the Missouri road subject to the provision in the constitution of Missouri adopted

in 1865, that "no property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools, and such as may belong to the United States, to this State, to counties, or to municipal corporations within this State." *Keokuk & Western Railroad Co.* v. *Missouri*, 301.

2. The consolidation of the Missouri corporation, under the Missouri act of March 2, 1869, with an Iowa corporation, operated to extinguish the old company, and to form a new one as of the date of the consolidation, and the provisions concerning exemption from taxation in the old charter did not pass to the new company. *Ib.*
3. The act of the State of Arkansas of July 21, 1868, (Laws of 1868, 148,) "to aid in the construction of railroads," and the act of April 10, 1869, (Laws of 1868–9, 147,) "to provide for paying the interest upon the bonds issued to aid in the construction of railroads," taken together created no lien upon the property of a railroad company for whose benefit the state bonds had been issued, notwithstanding the provisions contained in the act of March 18, 1867, (Laws of 1866–7, 428,) as that act had no force in this respect after the adoption of the state constitution of 1869. *Tompkins* v. *Fort Smith Railway Co.*, 125 U. S. 109, affirmed and followed. *McKittrick* v. *Arkansas Central Railway Co.*, 473.
4. The sale of the Arkansas Central Railway in the foreclosure proceedings under the mortgage to the Union Trust Company, and the deed made in pursuance thereof, passed the property to the purchaser free from any claims of the creditors of the railway company. *Ib.*
5. The alleged frauds of the president of that railway company are examined and held not to invalidate that sale. *Ib.*
6. Neither the State of Arkansas, nor the holders of the bonds of the State issued in aid of the construction of that railway, were necessary parties to that foreclosure suit. *Ib.*

See ACTION, 1, 2;
ESTOPPEL, 1;
MASTER AND SERVANT;
NEGLIGENCE;
RIPARIAN RIGHTS, 11.

REMOVAL OF CAUSES.

See JURISDICTION, B, 2.

RES JUDICATA.

1. A judgment recovered in a Circuit Court of the United States in favor of the plaintiff by the owner of a patent right in an action against a licensee to recover royalties on sales of the patented article, where the sole defence set up was that the articles manufactured and sold by the defendant were not covered by the patent, in which the amount recovered was not sufficient to permit a review in this court, is a bar to an action in the same Circuit Court by the same plaintiff against the same defendant, to recover like royalties on other like sales where

the same defence is set up, and no other, and the amount involved is sufficient to authorize a review here. *Johnson Co.* v. *Wharton*, 252.

2. A mortgagee is not bound by judgments or decrees against the mortgagor in suits begun by third parties subsequent to the mortgage, unless he or his representative is a party to the litigation. *Keokuk & Western Railroad Co.* v. *Missouri*, 301.
3. A suit for taxes for one year is no bar to a suit for taxes for another year. *Ib.*
4. In order to work an estoppel, the operation of it must be mutual. *Ib.*
5. A final decree of a Federal court, being unmodified and unreversed, cannot be treated as a nullity when assailed collaterally by one who was a party to the suit in which it was rendered. *Dowell* v. *Applegate*, 327.
6. In a suit by A to subject lands of B to sale in satisfaction of his claims, a decree in the complainant's favor is final, if not appealed from, and B cannot have the same issue retried in an independent suit, based upon a title which he might have set up in the first suit, but did not. *Ib.*

RIPARIAN RIGHTS.

1. By the common law, the title in the soil of the sea, or of arms of the sea, below high water mark, except so far as private rights in it have been acquired by express grant, or by prescription or usage, is in the King, subject to the public rights of navigation and fishing; and no one can erect a building or wharf upon it, without license. *Shively* v. *Bowlby*, 1.
2. Upon the American Revolution, the title and the dominion of the tide waters and of the lands under them vested in the several States of the Union within their respective borders, subject to the rights surrendered by the Constitution to the United States. *Ib.*
3. In the original States, by various laws and usages, the owners of lands bordering on tide waters were allowed greater rights and privileges in the shore below high water mark, than they had in England. *Ib.*
4. The new States admitted into the Union since the adoption of the Constitution have the same rights as the original States in the tide waters, and in the lands under them, within their respective jurisdictions. *Ib.*
5. The United States, upon acquiring a Territory, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, take the title and the dominion of lands below high water mark of tide waters for the benefit of the whole people, and in trust for the future States to be created out of the Territory. *Ib.*
6. Upon the question how far the title extends of the owner of land bounding on a river actually navigable, but above the ebb and flow of the tide, there is a diversity in the laws of the different States; but the prevailing doctrine now is that he does not, as in England, own to the thread of the stream. *Ib.*

7. The title and rights of riparian or littoral proprietors in the soil below high water mark are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution. *Ib.*
8. The United States, while they hold country as a Territory, have all the powers both of national and of municipal government, and may grant, for appropriate purposes, titles or rights in the soil below high water mark of tide waters. *Ib.*
9. Congress has not undertaken, by general laws, to dispose of lands below high water mark of tide waters in a Territory; but, unless in case of some international duty or public exigency, has left the administration and disposition of the sovereign rights in such waters and lands to the control of the States, respectively, when admitted into the Union. *Ib.*
10. A donation land claim, bounded by the Columbia River, acquired under the act of Congress of September 27, 1850, c. 76, while Oregon was a Territory, passes no title or right in lands below high water mark, as against a subsequent grant from the State of Oregon, pursuant to its statutes. *Ib.*
11. A railroad corporation, which has laid out, built and maintained its railroad for two miles along the shore of a harbor, below high water mark, claiming under its charter the right to do so and the ownership of adjacent lands under tide waters of the harbor, cannot maintain a bill in equity to restrain a board of commissioners from establishing, pursuant to statutes of the State, a general system of harbor lines in the harbor, and from filing a plan thereof. *Prosser* v. *Northern Pacific Railroad*, 59.

RULE.

See PRACTICE, 1.

SET-OFF.

See EQUITY, 4.

SHIPS AND SHIPPING.

Under Rev. Stat. § 4283, the liability of a ship owner for the "freight then pending" extends, (1), to passage money, and, (2), to freight prepaid at the port of departure. *The Main* v. *Williams*, 122.

See CONTRACT, 1.

SPIRITUOUS LIQUOR.

Lager beer is not "spirituous liquors" nor "wine" within the meaning of those terms as used in Rev. Stat. § 2139. *Sarlls* v. *United States*, 570.

STATUTE.

A. CONSTRUCTION OF STATUTES.

See CUSTOMS DUTIES, 1.

B. Statutes of the United States.

See Assignment for Benefit of Creditors, 1;
Customs Duties, 2, 3, 4, 5, 8, 9, 10;
Fees;
Heir;
Jurisdiction, A, 1; B, 2; C;
Longevity Pay, 1;
Mineral Land, 1, 5;
Patent for Invention, 3;
Practice, 1;
Public Land, 2, 3, 4, 6, 8, 9;
Riparian Rights, 10;
Ships and Shipping;
Spirituous Liquor.

C. Statutes of States and Territories.

Arkansas. *See* Assignment for Benefit of Creditors, 1; Railroad, 3.
Indiana. *See* Action, 1.
Mississippi. *See* Guardian and Ward.
Missouri. *See* Railroad, 1, 2.
Montana. *See* Constitutional Law, 3.
New York. *See* Constitutional Law, 2.
Oregon. *See* Riparian Rights, 10, 11.
Pennsylvania. *See* Local Law, 5.

TAX AND TAXATION.

See Railroad, 1, 2;
Res Judicata, 3.

TIDAL WATERS.

See Riparian Rights.

TORT.

See Action, 1, 2.

TRESPASS.

See Negligence, 2.